

## **REMARKS**

In the Action, Claims 1, 2 and 4-12 are pending. Claims 1, 2 and 4-12 are rejected. Claims 1 and 8 have been amended. Claim 3 is cancelled. Claims 1-2 and 4-12 remain.

Applicant requests reconsideration of the application in view of the amendments and following remarks.

It is asserted in the Action that Claims 8-12 are rejected under 35 USC 103(a) as being unpatentable over Kalman et al. (US 6,680,912) in view of Kao et al. (US 7,212,490) and Walrand et al. (US 6,711,125). Claims 1, 2 and 4-7 are rejected under 35 USC 103(a) as being unpatentable over Kalman et al., Kao et al., and Walrand et al., as applied to claim 8, and further in view of Applicant's own admission, the Examiner taking the position that the feature upon which Applicant relies is not recited in the rejected claims, noting that limitations from the specification are not read into the claims.

In response, Applicant notes that in the response to the prior Office Action, at page 6, it was expressly pointed out that Applicant is not attempting to read limitations from this specification into the claims, but rather, Applicant's usage rate is a defined term which is not the same as the prior art transmission rate. See lines 3-5 at page 6 of the prior response. Since it is well established that Applicant is entitled to rely upon defined terms in claims based on definitions provided in the specification, Applicant believes that the Examiner's position is clearly erroneous.

Nevertheless, Applicant has amended Claims 1 and 8 incorporating the specific language from the specification as noted above, namely, wherein said usage rate is an allowable transmission rate per node according to a fairness algorithm.

Accordingly, reconsideration and withdrawal of the rejections under 35 USC 103(a) is respectively requested.

Applicant submits that all pending claims, namely Claims 1-2 and 4-12 are now in condition for allowance, which early Action is requested.

If there are any fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. If a telephone interview would expedite the prosecution of this Application, the Examiner is invited to contact the undersigned at (310) 207-3800.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN

Dated:

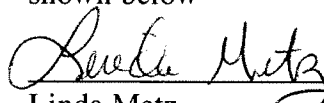
10/22/08

  
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below

 10-22-08  
Linda Metz October 22, 2008